

APPROPRIATIONS: Legislature is required to enact all other appropriation bills prior to the appropriation bill for expenses of the General Assembly.

December 11, 1946



12/12

Honorable R. J. King, Jr.
Representative, Franklin County
St. Clair, Missouri

Dear Sir:

This acknowledges your request, which is as follows:

"The 63rd General Assembly has not appropriated, as yet, any sum for the contingent expenses of the 64th General Assembly for the first six months of 1947.

"I would like your opinion on the following questions:

"1. In view of the provisions of Section 36, Article III of the Constitution defining the order of appropriations, can the 64th General Assembly appropriate for their contingent expenses for the first six months of 1947, prior to the passage of the regular appropriation, bills for the next biennium?

"2. Would this appropriation, if made, be considered supplementary to the appropriations of the 63rd General Assembly for the same fiscal period?

"A prompt reply will be appreciated as the General Assembly meets December 12, and if action by this legislature is necessary, it will have to be taken at that time."

Replying thereto, we refer to a number of provisions of the 1945 Constitution bearing on your inquiry. Section 36 of Article III thereof provides:

" * * * the general assembly shall have no power to divert the same or to permit the withdrawal of money from the treasury, except in pursuance of appropriations made by law. All appropriations of money by successive general assemblies shall be made in the following order:

"First: For payment of sinking fund and interest on outstanding obligations of the state.

"Second: For the purpose of public education.

"Third: For the payment of the cost of assessing and collecting the revenue.

"Fourth: For the payment of the civil lists.

"Fifth: For the support of eleemosynary and other state institutions.

"Sixth: For public health and public welfare.

"Seventh: For all other state purposes.

"Eighth: For the expense of the general assembly."

Section 28 of Article IV thereof provides:

" * * * * No appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates, and every appropriation shall expire six months after the end of the period for which made."

Section 23 of Article IV thereof provides:

"The fiscal year of the state and all its agencies shall be the twelve months beginning on the first day of July in each year. The general assembly shall make appropriations for one or two fiscal years, * * * *"

We do not find any court decisions construing the above constitutional provisions of the 1945 Constitution, but in the 1875 Constitution Section 43 of Article IV thereof is similar in principle to Section 36 of Article III of the 1945 Constitution. Each of them provides the sequence of the various appropriations. In each of them the various other appropriations are required to be made before the final appropriation for the General Assembly is made. Said section in both Constitutions provides that "all appropriations of money by successive general assemblies shall be made in the following order," then after specifying all the others the last appropriation act shall be "for the expense of the general assembly."

In State ex rel. V. Henderson, 160 No. 190, 6 S.W. 1093 (1901), our Supreme Court, en banc, discussed whether an appropriation act creates a lien on that part of the public treasury's fund that is first appropriated to the end that the whole amount of all prior appropriations shall be in the treasury before any of the subsequent appropriations can be paid. The Court held it need not be. The opinion, speaking of the above and also the sequence of the appropriation act, says:

"But again, section 15, article 10, leaves no doubt whatever as to the intention of the convention. It requires that 'all moneys now or at any time hereafter, in the State Treasury, belonging to the State, shall immediately on receipt thereof be deposited by the Treasurer to the credit of the State for the benefit of the funds to which they respectively belong in such bank or banks' as may be selected under that section.

"So that it will not do to say that the Constitution requires all revenues of the State to be first paid into one general or common fund and then disbursed in the order named in section 43, article 4, of the Constitution.

"That section simply requires the General Assembly to proceed in that order in passing its appropriation bills.

"It does not follow because the Legislature is required to pursue a specific order in

passing appropriation bills, that it may not provide a tax for a public purpose, and require it to be paid into the Treasury and set apart in a special fund subject to a subsequent appropriation for the purpose for which it was levied, or for that matter, to some other public purpose, when unrestrained by a constitutional limitation.

"In prescribing the order for the passage of the appropriation bills there was no intention to create special liens upon the moneys in the Treasury or give any priority of payment to one appropriation over another.

"We think the purpose of the framers of the Constitution among possibly others, was to prevent an adjournment of the Legislature without making the necessary appropriations for the support of the State Government, and its various educational, penal, and eleemosynary institutions, and the prompt payment of its obligations as they matured, and in this manner prevent extravagant and extraordinary appropriations in excess of the estimated and probable revenues of the State. We can not agree with the learned counsel that the entire income of the State is mortgaged in favor of the various items named in section 43, article 4, of the Constitution, and that the full amount of the appropriation for each purpose must first be collected and set apart before any part of the next in order can be paid. No such construction has ever been given the Constitution or the laws appropriating taxes for various state and county purposes.

"The Constitution does not say that the first money received into the Treasury shall be applied to meet the first item mentioned in said section 43, that no money shall be disbursed on account of a subsequent appropriation until a sufficient amount is accumulated in the Treasury to meet all prior appropriations.

"Such a claim is inconsistent with our whole scheme of taxation. The moneys for the various

institutions and the support of the civil list are never in the Treasury when the Legislature makes the appropriations. A large part of the funds will not reach the Treasury for nearly two years after the appropriations are made. If the contention of the relators should be sustained, the mileage and per diem of the members of the Legislature, and of the various State officials would be postponed until two years after their passage.

"No such interpretation has ever been put upon this section, but the practical construction has been that no such lien or priority was created thereby."

The reasoning there applied to the 1875 Constitution applies equally to the similar provisions of the 1945 Constitution. That part of Section 28 of Article IV of the 1945 Constitution, to wit, "No appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates, and every appropriation shall expire six months after the end of the period for which made," is for the first time found in the 1945 Constitution and has not been construed by the courts.

The 1875 Constitution, Section 19 of Article X, provides:

"No moneys shall ever be paid out of the treasury of this State, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made, or a warrant shall have issued therefor, within two years after the passage of such appropriation act; * * * *"

The 1945 Constitution, different from that of 1875, provides the fiscal year shall be "the twelve months beginning on the first day of July in each year" and that the Legislature may appropriate yearly or biennially as it sees fit.

Section 19 of Article X of the 1875 Constitution provided that payments should be made or a warrant drawn against the appropriation within two years after passage of the appropriation act. In *The State of Missouri ex rel. Blakeman v. Hays, State Treasurer*, 49 Mo. 604, in mandamus to require the re-

spondent to pay a warrant that had been duly audited, the return pleaded, among other defenses, that there was no money in the treasury appropriated to pay it. The court said, l.c. 605:

" * * * * The respondent further denies that there has remained in the treasury, or is now in it, any money appropriated to pay said warrant, or appropriated to said military fund. To this return the relator demurs.

"The treasurer cannot be required to pay out the funds intrusted to his keeping unless appropriated; as the minister of the State, with no discretionary powers, he must disburse when and as, and only when and as, the law-making power shall direct. (Const. Mo., art. XI, Sec. 6.) He usually looks only to the warrant, but is not bound by that if drawn without an appropriation. And if an appropriation lawfully made be exhausted, his payments must necessarily stop. Hence that part of the return denying, in effect, that there is money in the treasury appropriated for the purpose, furnishes a complete excuse for his refusal. * * * *"

In *Wacy v. LePage*, 341 No. 1039, 111 S.W. (2d) 25, our Supreme Court, speaking of the state treasurer, said, l.c. 1041:

" * * * * His duty is to pay out these funds only 'in pursuance of an appropriation by law' which 'shall distinctly specify the sum appropriated and the subject to which it is to be applied.' * * * *"

In *State v. Weatherby*, 344 No. 348, 129 S.W. (2d) 887 (1939), Division One of the Supreme Court considered the validity of salary payments and the right of the state to recover those illegally paid. The Court held a salary could be lawfully paid out only out of the funds appropriated therefor and that the salary unlawfully paid could be recovered. The point was there made by the defendant that the audit by

the auditor and issuance of a warrant by him was a defense against the state's suit to recover, but the Court denied that contention and said, No. 1.c. 556:

"We think this contention sufficiently answered by our ruling that the instant payments were had upon warrants unauthorizedly drawn against an appropriation not chargeable therewith, and no action by any public official could make them anything else or infuse validity into them."

At page 857 the Court said of the auditor:

" * * * His authorization of unlawful disbursements of public funds is not binding upon the State. * * * "

From the above it will be seen that before any money can be legally paid out of the State Treasury there must first be an appropriation so authorizing (we do not here trace the antecedent steps which are not raised by your inquiry), and the obligation for which payment is to be made must have been incurred prior to "the termination of the fiscal period to which it relates," and the actual payment thereof shall be made within "six months after the end of the period for which made." (1945 Constitution, Section 28 of Article IV.)

The above section states, "and every appropriation shall expire six months after the end of the period for which made." When the appropriation expires," it is dead. Thereafter there is no appropriation at all in the eyes of the law.

If the present Legislature fails to pass an appropriation bill at this session appropriating a fund to be used by the next Legislature, then there will not be any money legally available to pay the expenses of the next Legislature until after the passage of such a bill, and the Constitution, supra, requires as a condition precedent to the passage of such bill that each of the other appropriation bills set out in Section 36 of Article III of the 1945 Constitution, and numbered "First" to "Seventh," inclusive, be first passed.

This course appears not only to be the plain mandate of the Constitution, but it is also based on sound reasoning. The Legislature must use its judgment as to the amount of

money that will be required to operate for the ensuing fiscal period the judicial and executive branches of the State government, and the law contemplates that it should likewise use its judgment as to the amount required to operate the legislative branch. By enacting during the current session the appropriation bill providing the fund for "the expenses of the General Assembly" which succeeds the present session, we know of no constitutional provision that would be thereby violated.

The present Constitution, in Section 23 of Article IV, states that "the general assembly shall make appropriations for one or two fiscal years. If the lawmaking department of the government elects to make the appropriations for one fiscal year, the appropriation act providing for payment of the expenses of the General Assembly will probably be, in the judgment of the Legislature, less than if the appropriations are on the basis of two fiscal years, either of which periods may be adopted by the Legislature. That is a matter entirely within the discretion of the Legislature, but the constitutional requirement as to priority of passage of the various appropriation acts should be followed. If the law-making branch follows the course here above outlined, there will be applied the thought expressed in *State ex rel. v. Henderson, supra*:

"We think the purpose of the framers of the Constitution among possibly others, was to prevent an adjournment of the Legislature without making the necessary appropriations for the support of the State Government, * * * and the prompt payment of its obligations as they matured, and in this manner prevent extravagant and extraordinary appropriations in excess of the estimated and probable revenues of the State. * * * *"

Such a course has the additional virtue of providing in a lawful way for the prompt payment of the legislative expenses, and there will then be no need to resort to the practice of passing a resolution and on the strength of such resolution expect or ask the executive officers to advance the money before it has been lawfully appropriated.

We do not understand your inquiry to refer to, nor does this opinion cover, the salary of the members of the General

Assembly because Section 16 of Article III of the 1945 Constitution provides that these salaries shall be paid without a legislative appropriation. Said section provides:

" * * * * upon certification by the president and secretary of the senate and by the speaker and chief clerk of the house of representatives as to the respective members thereof, the state auditor shall audit and the state treasurer shall pay such compensation without legislative enactment. * * * *"

Conclusion.

It is our opinion that the 64th General Assembly does not have the constitutional authority to pass an appropriation act providing for the expenses of the General Assembly until there has been passed each of the other appropriation bills enumerated in Section 36 of Article III of the 1945 Constitution.

We are not sure we understand your second inquiry, but we do not see any legal distinction to be attached to whether the appropriation as now made by the current Legislature for expenses of the succeeding Legislature is considered as supplementary of the appropriation of the present Legislature. Such an appropriation is necessarily a part of the appropriations passed by the present General Assembly for the fiscal term, the length of which may be one or two years, at the election of the Legislature.

Yours truly,

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APPROVED:

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